



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6167 7039

January 11, 2010

Mr. Ariu Levi, Director
Alameda County
Department of Environmental Health
1131 Harbor Parkway, Suite 240
Alameda, California 94502-6577

Dear Mr. Levi:

The California Environmental Protection Agency (Cal/EPA), California Emergency Management Agency, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Alameda County Department of Environmental Health Certified Unified Program Agency (CUPA) on December 1 and 2, 2009. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Alameda County Department of Environmental Health program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Ernie Genter every 90 days after the evaluation date; the first report is due on March 2, 2010.

Cal/EPA also noted during this evaluation that Alameda County Department of Environmental Health has worked to bring about a number of local program innovations, including a commendable enforcement program and an outstanding and rapid transition of absorbing and implementing the CUPA program within a newly acquired jurisdiction. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program website to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by e-mail at jbohon@calepa.ca.gov.

Sincerely,

[Original Signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Sent via e-mail:

Ms. Susan Hugo
CUPA Manager
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Mr. Sean Farrow
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Mr. Mark Pear
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Mr. Jack Harrah
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Ms. Terry Brazell
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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Alameda County Environmental Health

Evaluation Date: December 1 and 2, 2009

EVALUATION TEAM

Cal/EPA: Ernie Genter
SWRCB: Sean Farrow
DTSC: Mark Pear
Cal EMA: Jack Harrah

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Ernie Genter at (916) 327-9560.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>The 2007/2008 and 2008/2009 Annual Self-Audits do not contain all the required elements. The self-audits were missing:</p> <ol style="list-style-type: none">1. A report of deficiencies with a plan of correction2. A narrative summary of the effectiveness of activities including: permitting and enforcement <p>They do not include a report of deficiencies with a plan of correction section. There was a check list portion of the audits that stated "yes" deficiencies had been identified and then "yes" they had been corrected, but there is no narrative section discussing the deficiencies or their correction. The CUPA's "Unified Program Self-auditing Procedures" also states that the self-audit will contain this element.</p> <p>The narrative summary of program element activities, including effectiveness and efficiency of the permitting, inspection, and enforcement activities includes no narrative regarding the permitting or enforcement activities (i.e. dedicated staff performing formal enforcement, 3 AEOs, referrals, fines/penalties, etc).</p>	<p>By October 31, 2010, the CUPA will submit a copy of their 2009/2010 fiscal year self-audit report to Cal/EPA. The CUPA will assure that all required elements are adequately addressed in the report.</p> <p>Cal/EPA will provide the CUPA with examples of permitting and enforcement narratives.</p>

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	<p>Such narrative can be a useful tool for checking the numbers in the Annual Reports. This narrative can also identify discrepancies on the annual and quarterly reports that may need explained in the self-audit pursuant to 15280(c)(3).</p> <p>Additionally, there was no detail or discussion in the narrative summary of the annual review and update of the fee accountability program. There was only a statement that there was “no change”. However, FY 07/08 had 4% fee increase and 08/09 had 5% fee increase as identified under the ordinance change section of the self-audit. These increases would certainly seem to be the result of, or have an affect on the fee accountability program (revenue verses expenses, etc). Also, the CUPA should refer to their single fee policy – adjustment of fee schedule, and Fee Accountability Program in the policy binder.</p> <p>CCR, Title 27, Section 15280 (c)(1), (2), (3), and (4); and 15220 [Cal/EPA]</p>	
2	<p>Although the CUPA is submitting all surcharge funds, they are not transmitting them within the required frequency. The CUPA is submitting the surcharge to the state annually rather than quarterly as required under Title 27.</p> <p>CCR, Title 27, Section 15250(b)(1) [Cal/EPA]</p>	<p>By April 30, 2010, the CUPA will transmit the surcharges collected during the third fiscal quarter. In addition the CUPA will continue to transmit collected state surcharges quarterly, within 30 days of the end of each state fiscal quarter.</p>
3	<p>The CUPA has failed to report on a quarterly basis to DTSC the RCRA LQG data (inspections, violations and enforcement actions). The CUPA submitted an annual report for fiscal year 2007/2008, which included the inspection performed at Lawrence Livermore National Laboratory.</p> <p>HSC, Chapter 6.5, Section 25187(m) CCR, Title 27, Section 15290(g)[DTSC]</p>	<p>By April 30, 2010, the CUPA will begin reporting LQG data on a quarterly basis rather than an annual basis. Reports will submitted to Chuck McLaughlin, DTSC 8800 Cal-Center Drive, Sacramento, CA 95826.</p>
4	<p>The CUPA is not collecting all of the new Underground Storage Tank (UST) data elements for permit renewals that came into effect in December 2007. File review indicates that approximately 23% of files were missing all of the new data elements; 10 % had two of three forms; and 13 % had all three forms.</p> <p>HSC, Chapter 6.7, Section 25286(a) [SWRCB] CCR, Title 23, Section 2711(a); and CCR, Title 27, Section 15185(a)</p>	<p>Beginning December 2, 2009, the CUPA will collect the new UST data elements.</p> <p>By March 2, 2010, the CUPA shall submit three sets of submitted UPCF Forms A, B, and D.</p>

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CUPA Representative	<hr/> Susan Hugo (Print Name)	<hr/> Original Signed (Signature)
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Evaluation Team Leader	<hr/> Ernest Genter (Print Name)	<hr/> Original Signed (Signature)
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Certified Unified Program Agency (CUPA)
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PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** Ongoing enforcement cases were in the regular facility files and not flagged as confidential.

Recommendation: Cal/EPA recommends that open enforcement case files be kept in a separate file or be otherwise flagged as confidential.

2. **Observation:** The CUPA's annual Title 27 self audit report contains most of the elements of 19 CCR 2780.5, and thus can suffice as a CalARP performance audit as well. However, 19 CCR 2780.5(b)(8) (stationary sources determined to be exempt) is not addressed in the Title 27 self audit.

Recommendation: Cal EMA recommends that all of the elements of 19 CCR 2780.5 be addressed in the annual self audit report, even if the answer is "no" or "none". If this is done, the CUPA does not need to do a separate Title 19 annual performance audit.

3. **Observation:** On page 1 of the CUPA's Inspection and Enforcement Plan, the statutory reference for CalARP inspection frequency is given as 19 CCR 2775.3. While this citation does correctly give the mandated inspection frequency, it is a regulatory reference. The correct statutory reference is Health & Safety Code, section 25537(a).

Recommendation: None

4. **Observation:** On page 4 of the CUPA's Inspection and Enforcement Plan, the time frame given for return to compliance for a CalARP inspection (19 CCR 2775.3) is actually the time frame for an audit (19 CCR 2775.2). Unless the CUPA is performing an RMP audit at the same time an inspection is being performed, this is not necessarily a valid time frame.

Recommendation: Cal EMA recommends that the CUPA clarify whether or not audits and inspections are being performed concurrently. If they are not, 19 CCR 2775.3 states that CalARP inspections should be coordinated with other Unified Program elements. Thus, the time frame for the business plan program could be used for CalARP as well.

5. **Observation:** The CUPA is conducting inspections with a frequency that is consistent with its Inspection and Enforcement Plan and with the inspection of other program elements. The CUPA has inspected 91% of all hazardous waste generators that have been identified by the CUPA.
 - 1) 554 hazardous waste generators were identified in Fiscal Year 06/07 of which 170 were inspected.
 - 2) 573 hazardous waste generators were identified in Fiscal Year 07/08 of which 172 were inspected.
 - 3) 569 hazardous waste generators were identified in Fiscal Year 08/09 of which 176 were inspected.

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Recommendation: None

- 6. Observation:** The CUPA routinely accesses the DTSC Hazardous Waste Tracking System to determine whether facilities within its jurisdiction have active EPA ID numbers and to review facility manifests before conducting a hazardous waste generator inspection.

Recommendation: DTSC recommends that the CUPA please continue to access DTSC's Hazardous Waste Tracking System for future generator inspections to determine waste profiles and generation status from previous manifests sent.

- 7. Observation:** The CUPA was able to demonstrate that most of the complaints which were referred by DTSC from November 25, 2006 to November 25, 2009 were tracked. Follow up documentation could be found for Complaints Nos. 07-0507-0232, 07-0507-0248, 09-0409-0208, 09-0209-0073, 08-1208-0835, and 08-1108-0829. However, follow up documentation could not be found for complaints 07-0807-0461, 08-0408-0282, and 07-1007-0609. The CUPA maintains that these last three complaints were never received by the CUPA from DTSC.

Recommendation: DTSC recommends that the CUPA ensure that all complaints are being received by the CUPA from DTSC by providing the e-mail address of the person who should receive complaints to NLancast@dtsc.ca.gov, complaint coordinator. Investigate and document all complaints referred. Investigation does not always entail inspection, as many issues may be resolved by other means such as a phone call. In any instance, it is suggested that all investigations be documented, either by inspection report or by "note to file" and placed in the facility file. Please notify the complaint coordinator of the disposition of all complaints.

- 8. Observation:** The CUPA inspector conducted a complete hazardous waste generator oversight inspection. The inspector asked for consent, took photographs, and toured the entire site. Record keeping related to hazardous waste including manifests, contingency plan, training plan, and training records were reviewed. The inspector noted his findings and concluded the inspection with a close out of his summary of violations on site, provided fact sheets, and addressed all of the operator's concerns.

Recommendation: None

- 9. Observation:** During the May 21, 2007 HWG inspection of Andres Metal Craft located at 16593 East 14th Street in San Leandro, CA, the inspector noted sanding debris and paint dust disposed into a dumpster. The CUPA later on December 2, 2008 did sample material from a sump located on the property, which proved to be non-hazardous.

Recommendation: In the future, DTSC recommends samples should be initially taken at the earliest point of discovery (such as from the dumpster) in order to determine whether these materials are possibly hazardous waste.

- 10. Observation:** Ten hazardous waste inspection reports were reviewed, which were the following:

1) 02/21/2007 inspection of Marin's Auto Repair located at 16500 East 14th Street in San Leandro, CA.

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- 2) 04/03/2008 inspection of Elby's & Funk's Auto Works located at 6785 Dublin Blvd. in Dublin, CA.
- 3) 07/24/2007 inspection of Namomix, Inc. located at 5980 Horton Street in Emeryville, CA.
- 4) 07/15/2009 inspection of Novartis, Inc. located at 4560 Horton Street in Emeryville, CA.
- 5) 07/10/2006 inspection of Hexcel, Inc. located at 11711 Dublin Blvd. in Dublin, CA.
- 6) 04/23/2009 inspection of Cook's Collision located at 6091 Dublin Blvd. in Dublin, CA.
- 7) 08/16/2007 inspection of Harvey's Cleaners located at 6797 Dublin Blvd in Dublin, CA.
- 8) 4/22/2008 inspection of Seawest Power Resources, LLC located at 10619 Altamont Pass Road in Livermore, CA.
- 9) 06/09/2006 inspection of Green Ridge Services located 4010 Dyer Road in Livermore, CA.
- 10) 07/27/2007 inspection of Kayo Oil located at 6401 Dublin Boulevard in Dublin, CA lacked a Return to Compliance certificate.

Of the ten files reviewed, the CUPA had either Return to Compliance certificates, documentation, or re-inspection reports for nine of those facilities found with minor violations.

Recommendation: None

- 11. Observation:** The CUPA's inspection frequency for business plan facilities in the last two fiscal years has decreased. In 2007-8, the CUPA inspected 30% of the businesses. This dropped to 26% in 2008-9. The CUPA has hired new staff and will be increasing the emphasis on inspections. However, the CUPA has also taken over the program for Newark, a major increase in workload.

Recommendation: Cal EMA recommends that the CUPA make inspections a major priority.

- 12. Observation:** The CUPA's area plan, dated September 2009, meets all the elements of Title 19, CCR, and is fully compliant with SB 391 (2004), the pesticide drift bill.

Recommendation: None.

- 13. Observation:** All HMBP's and UST program documents have been scanned and are in electronic format including all Newark business file documents. All business plans are supplied to fire departments and other responders in electronic form.

Recommendation: None

- 14. Observation:** The CUPA's UST inspection report does not distinguish among Class I, Class II, and minor violations and does not identify Significant Operational Compliance items or provide for a summary of these items for tracking purposes during the annual compliance inspection.

Recommendation: The SWRCB recommends that the CUPA modify its UST inspection report so that each violation can be classified separately to distinguish between enforcement modes for Class I, Class II and minor violations and provide a means for determining SOC compliance during the inspection. Classification of the violations and SOC criteria will assist in reporting information on the Annual Enforcement Summary Reports.

- 15. Observation:** In some instances, Return to Compliance (RTC) for UST's is not annotated on the inspection checklist or written down in the file when completed.

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Recommendation: The SWRCB recommends that the CUPA add an RTC block to the inspection checklist. An inspection “Draft” checklist has been given to the CUPA. This checklist is not required to be used by the CUPA. It is an example/tool to help the CUPA identify and track violations including SOC items that need to be reported to Cal EPA and SWRCB.

Note: CUPA has stated that they plan on using the “Draft” inspection checklist as it contains elements not covered on their current checklist.

16. Observation: The CUPA’s files are well-organized and information is easily obtained due to the use of multi-sectional folders.

Recommendation: The SWRCB recommends that the CUPA continue to maintain their files in a well-kept manner.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. The CUPA, with limited staff, is providing a commendable overall CUPA program. Deficiencies noted in this evaluation summary of findings were all relatively minor. In addition to the normal CUPA responsibilities, the CUPA participates in a number of other programs, including methamphetamine lab cleanups. The CUPA provided meth lab cleanup oversight to sites in City of San Leandro and City of Hayward which were outside their CUPA areas of jurisdiction. The CUPA had issued no further action / clearance letters to three formerly meth contaminated residential sites. In addition, the CUPA integrates the Clean Water Program inspections, and assists in the Green Business Program by recommending facilities that are environmentally compliant receive the Green Business Certification. The CUPA works with their site mitigation unit handling ground water investigations and cleanups related to USTs releases and immediate cleanup oversight are provided. The CUPA also participated in responding to a emergency response gasoline spill which originated in another county CUPA area involving multi jurisdictions from County Fire agencies, Environmental Health agencies, city officials and Public Health officers. The CUPA provided technical advise and recommendations to Fire Chiefs, Public Health Officer and City Manager regarding the immediate health risk and evacuation of affected homes and monitoring and cleanup requirements.
2. The CUPA has a commendable enforcement program. They have a thorough and complete Inspection and Enforcement Plan, an excellent relationship with the District Attorney which involves regular coordination meetings, and they have a ½ time position dedicated to CUPA enforcement. They also have detailed spread sheets and guidance document for tracking of inspections, violations noted, follow-up, and return to compliance. Data entry access to the spreadsheet is limited to management, but it is available for use by all staff. The CUPA has taken a number of formal enforcement actions, which include:
 - Settled an illegally disposing case for \$2800.00.
 - Settled an illegally tampering with the leak sensor case for \$2895.00
 - Settled a failure to provide an annual HMBP update and certification case for \$1460.00.
 - Three other open active cases have been referred to the DA's office.
3. The CUPA took over Newark CUPA responsibilities in February of 2009. They did an outstanding job in the transition of absorbing and implementing the program from a new jurisdiction from the time they took over until now. This new jurisdiction included 234 businesses, 16 UST, 3 CalARP, 2 tiered permitting. In February the CUPA sent a letter to all Newark businesses informing them of the change in CUPA, changes in fees and other associated changes in the programs. They faced and overcame numerous challenges as they assumed responsibility of the program, including no additional funding, taking over in the middle of a permitting and billing cycle, different regulatory thresholds had been used (fire code instead of HSC and Title 19), and different enforcement policies. During the same time period the CUPA had to deal with fraudulent activities where individuals using fake uniforms and badges were going around and collecting fees on the spot.
4. The CUPA has established an outstanding outreach component for the UST program. Every two years, the CUPA hosts two class sessions for designated operator training. The class includes a review of the UST laws and regulations and performance training along with hands-on identification of actual UST components. The attendees are provided with the latest version of the California UST examination references published by ICC. The procedure for registration and exam site location is

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included to facilitate the owner/operators in taking the exam for Designated Operator certification. Additionally the CUPA staff will provide one on one coaching if the attendee is not successful in passing the exam.